

ORIGINAL



FILED
OFFICE OF THE
SECRETARY

AES Sparrows Point LNG, LLC
4300 Wilson Boulevard
Arlington, VA 22203

2007 JUN 29 P 3:13

June 29, 2007

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 1st Street N.E.
Washington, D.C. 20426

Re: AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C., Docket Nos.
CP07-62-000, CP07-63-000, CP07-64-000, CP07-65-000

Dear Ms. Bose:

On January 8, 2007, AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (collectively "AES") filed applications with the Federal Energy Regulatory Commission ("FERC") to site, construct and operate an LNG Terminal and an approximately 88-mile pipeline, respectively. In those applications, AES notified FERC that it would file with Maryland a certification of the project's consistency with the Maryland Coastal Management Program pursuant to the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451, *et seq.* See Ex. J of Mid-Atlantic Express, L.L.C. application and Ex. H of AES Sparrows Point LNG, LLC application. The following day, AES submitted its Coastal Facilities Review Act ("CFRA") application to the Maryland Department of the Environment ("MDE"), including a certification of the project's consistency with the Maryland Coastal Management Program. A copy of the CFRA application, including the certification, was filed in the AES docket at FERC the following week. In accordance with 15 C.F.R. § 930.57(b), that certification reads as follows: "I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan."

In a May 9, 2007 letter - four months after AES's submittal of the consistency certification - MDE claimed that "AES's application/filing for the FERC License did not contain the required consistency certification" and that the six-month statutory period for MDE's consistency review had not yet begun to run (copy enclosed). MDE reiterated this position in a June 25, 2007 letter (also enclosed) and continues to maintain that it will not process AES's certification until a certification is filed with the FERC.¹ AES does

¹ We note that if MDE believed the certification to be in any way deficient or "incomplete," MDE was required by federal regulation to notify AES of any such deficiency within 30 days of MDE's receipt of an "incomplete" certification. 15 C.F.R. § 930.60(a)(1). MDE did not provide any such notice to AES.

Kimberly D. Bose

June 29, 2007

Page 2 of 2

not believe that MDE has any legal basis for refusing to review AES's consistency certification and that the facts show there is also no basis for MDE (belatedly) to assert that the statutory six-month timeclock has not yet begun to run.

Nevertheless, to address what may be the elevation of form over substance, and thereby to avoid an objection to the consistency of the project at the end of the six-month review period on the grounds that MDE is not "satisfied" with the certification that has been provided to the FERC, AES hereby repeats in connection with its FERC applications and with respect to the proposed LNG terminal and pipeline facilities located within the state's coastal zone:

The proposed activity complies with the enforceable policies of Maryland's approved management program and will be conducted in a manner consistent with such program.

If you have any questions concerning this submission, please do not hesitate to contact me at (703) 682-6754.

Very truly yours,

Kent Morton by JAF

Kent J. Morton
Project Director

Enclosures

cc: Medha Kochhar, FERC
Richard Yuill, AMEC
Elder A. Ghigiarelli, Jr., MDE
John King, NOAA
Joe DaVia, USACE



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

May 9, 2007

Kent J. Morton
Project Director
AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203

RE: Proposed AES Sparrows Point LNG Facility

Dear Mr. Morton:

I am writing with regard to the State's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), for the referenced project. Section 307 of the CZMA requires that proposed federal activities, including direct federal actions, federal licenses and permits, and federal assistance to State and local governments, be consistent to the maximum extent practicable with a State's federally-approved Coastal Zone Management Program (CZMP).

Maryland's CZMP is referred to as a "networked" program that is based on existing State laws and regulations. Accordingly, the State's Federal Consistency decision is a determination that the proposed federal activity complies with all applicable State authorities and permit requirements.

As we discussed at our meeting on April 18, 2007, there are two federal actions that are subject to Section 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) Section 10 (River and Harbors Act) and Section 404 (Clean Water Act) permit; and (2) the Federal Energy Regulatory Commission (FERC) license. With regard to federal licenses and permits, Section 307 of the CZMA requires the applicant to "certify" in the application for federal authorization that "the proposed activities comply with, and will be conducted in a manner consistent with, the State's Coastal Zone Management Program".

AES's application for the Coastal Facilities Review Act (CFRA) permit contained the Joint State/Federal application for proposed work in jurisdictional wetlands and waters. The application form for this authorization contains the required consistency certification. Thus, the 6-month timeframe for the State's decision on the Corps' permit

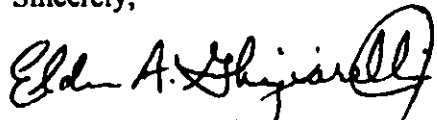
Kent J. Morton
May 9, 2007
Page 2

began on January 9, 2007. However, AES's application/filing for the FERC License did not contain the required consistency certification. Thus, the consistency clock has not started running on the FERC License.

The Federal Consistency regulations [15CFR Part 930, §930.60(a)(3)] allow State agencies and applicants to mutually agree to "stay" the consistency timeclock or extend the six-month review period. Since the State's CZMP is based on existing State authorities, the Section 307 Federal Consistency decision cannot be made until the Maryland Department of the Environment (MDE) has completed its review of all State permits/approvals required for the project. Accordingly, MDE requests that AES, in accordance with 15 CFR, Part 930, §930.60 (a)(c) , agree to stay the Federal Consistency timeclock until such time as the Secretary of MDE is prepared to render a decision on the AES application for a CFRA permit.

I look forward to your response to this request. If you have any questions, please contact me at (410) 537-3763.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Shari T. Wilson, Secretary
Joanne Wachholder, FERC
Joseph DaVia, Corps
John King, NOAA
Thomas Deming, Esq.



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

June 25, 2007

Kent J. Morton
Project Director
AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203

RE: Proposed AES Sparrows Point LNG Facility

Dear Mr. Morton:

I am writing with regard to the State's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), of the AES Sparrows Point LNG, LLC (AES) application/filing for the Federal Energy Regulatory Commission (FERC) license for the referenced project. As you are aware, the FERC license is subject to the provisions of Section 307 (c)(3) of the CZMA.

By letter dated May 9, 2007, the Maryland Department of the Environment (MDE) informed AES that the following federal actions are subject to the requirements of Section 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) permit; and (2) the FERC license. Further, because AES's filing for the FERC license does not contain the consistency certification required by the Federal Consistency regulations (15 CFR Part 930, § 930.57) and such certification has not been received by the State, the Federal Consistency timeclock has not started running on the FERC license.

The Federal Consistency regulations at 15 CFR Part 930, § 930.57 (a) state "... all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information." Section 930.57(b) requires that the applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."

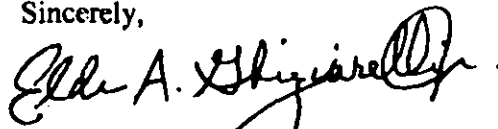
Kent J. Morton
June 25, 2007
Page 2

Based on the requirements, MDE requests that AES submit the required consistency certification to FERC and provide a copy of the certification to the State of Maryland in order to commence the consistency timeclock on the State's review of the FERC license. MDE has discussed the lack of the consistency certification with the National Oceanic and Atmospheric Administration (NOAA) and FERC. NOAA agrees that the timeclock does not start until the consistency certification is submitted, and FERC has confirmed that the filing does not contain a certification statement.

Finally, MDE still awaits AES's response to the State's request that AES agree to stay the Federal Consistency timeclock on both federal actions until such time as the Secretary of MDE is prepared to render a decision on the AES application for a Coastal Facilities Review Act permit. If a response is not received by July 2, 2007, MDE will proceed to process an objection to the federal consistency certification for the proposed impacts to wetlands and waterways regulated by the Corps.

If you have any questions, please contact me at (410) 537-3763.

Sincerely,



Elder A. Ghigiarelli Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Shari T. Wilson, Secretary
Judah Prero, AAG
Joanne Wachholder, FERC
Joe DaVia, Corps
John King, NOAA